



ORIGINAL

ECHO STAR COMMUNICATIONS CORPORATION

November 19, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20054

RECEIVED
EX PARTE OR LITIGATION NOV 19 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Ex Parte Notice – 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Order, MB Docket No. 02-277, MM Docket No. 01-235, MM Docket No. 01-317, MM Docket No. 00-244**

Dear Ms. Dortch:

At the request of Ken Ferree, Chief of the Media Bureau, and Paul Gallant, Chair, Media Ownership Working Group, EchoStar Communications Corp. (EchoStar) hereby submits for the record in the above-captioned proceeding information regarding "Most Favored Nation" (MFN) clauses in our distribution agreements with programmers.

In general, about 60% of our programming agreements include MFN clauses with respect to price (monthly fee per subscriber). While not true for much of EchoStar's history, most of the MPN clauses in recently entered programming agreements (roughly 90%) are technology neutral, meaning that they apply to the programmers' distribution agreements with all multichannel video programming distributors (MVPDs), not just Direct Broadcast Satellite (DBS) providers.

The Commission should note that even where MFN clauses are in effect, programmers usually are able to avoid offering EchoStar the best rate offered to another MVPD. The vast majority of MFN clauses include an exception for volume-based discounts. This allows programmers to lower their rates for the largest MVPDs, despite the presence of MFN clauses in agreements with other MVPDs. This issue typically is a matter of great concern to EchoStar during distribution negotiations with programmers, given that EchoStar's subscribership is considerably smaller than that of the largest cable MSOs.

Moreover, volume based exceptions to MFN clauses tend to be structured in stair-step fashion, rather than on a sliding scale. To illustrate with a hypothetical example, a programmer

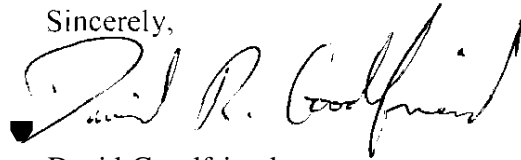
NOV 19 2002
LISA A. BROWN

that allows for volume-based discounts would agree to charge a rate of \$1 per subscriber to a MVPD with 0 to 100,000 subscribers, and \$0.50 per subscriber to a MVPD with 100,001 to 500,000 subscribers. The MVPD with 99,000 subscribers, therefore, would pay twice as much per subscriber as the MVPD with only 2,000 more subscribers. EchoStar believes that, due to this volume discount structure, it tends to pay more per subscriber than do the largest cable MSOs, even where the relative difference in subscribership between EchoStar and the MSO is not great.¹

Finally, programmers subject to MFN clauses may be able to favor particular MVPDs with benefits apart from volume based fee reductions. For example, a programmer might pay a MVPD a premium for favorable channel positioning or for marketing and launch support.

EchoStar hopes that the Bureau finds this information helpful and responsive. If you would like more detail or additional information, please do not hesitate to contact me at (202) 293-0981

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Goodfriend". The signature is fluid and cursive, with a large initial "D" and "G".

David Goodfriend
Director of Legal and Business Affairs
EchoStar Communications Corporation

David K. Moskowitz
Senior Vice President and
General Counsel
EchoStar Satellite Corporation
5701 South Santa Fe Drive
Littleton, CO 80120

¹ As EchoStar has pointed out previously to the Commission, programming executives are on record acknowledging that they charge satellite providers more than they charge cable operators for the same programming. For example, in 2001, Sumner Redstone, the CEO of Viacom, was interviewed by the Los Angeles Times, in which he noted: "[W]hat a lot of people **don't** know is that satellite broadcasters pay us more for the same programming than cable operators." 2001 WL 28929748 (November 18, 2001).

CERTIFICATE OF SERVICE

I, Gregory Noll, hereby certify that on this 19th day of November, 2002. copies of the foregoing were served by first class United States mail, postage prepaid, on the following:

Daniel L. Brenner
National Cable & Telecommunications
Association
1724 Massachusetts Avenue, NW
Washington, DC 20036-1903

Jack Richards
Kevin G. Rupy
Keller and Heckman LLP
1001 G Street, NW
Washington, DC 20001
*Counsel for the National Rural
Telecommunications Cooperative*

Ben Ivins
National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036

Bruce A. Olcott
Squire, Sanders & Denipsey, L.L.P.
1201 Pennsylvania Avenue, NW
P.O. Box 407
Washington, DC 20044-0407
Counsel for the State of Hawaii

James L. Casserly
Mintz, Levin, Cohn, Ferris, Clovsky
And Popeo, P.C.
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004
Counsel for Comcast Corporation

Jonathan A. Friedman
Willkie Farr & Gallagher
Three Lafayette Center
1155 21st Street, NW
Suite 600
Washington, DC 20036-3384
Counsel for AT&T Corporation

James H. Barker
Latham & Watkins
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004-1304
Counsel for DIRECTV, Inc.

Andrew S. Wright
Satellite Broadcasting and
Communications Association
225 Reinekers Lane
Suite 600
Alexandria, VA 22314

Phillip L. Spector
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, NW, Suite 1300
Washington, DC 20036
Counsel for SES Americom, Inc.

Gerald J. Duffy
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast
2020 L Street, NW, Suite 300
Washington, DC 20037
Counsel for South Dakota Network, LLC

Martin L. Stern
Preston Gates Ellis & Rouvelas Meeds LLP
1735 New York Avenue, NW
Suite 500
Washington, DC 20006
*Counsel for Broadband Service Providers
Association*

John Emerson
31 North Street
Lexington, MA 02420-1811

Rachel Lipman Reiber
Everest Connections Corp.
4740 Grand, Suite 200
Kansas City, Missouri 64112

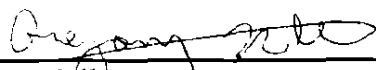
Aithur H. Harding
Fleishman and Walsh L.L.P.
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
*Counsel for Kansas City Cable Partners
d/b/a Time Warner Cable*

Edgar Class, III
Shook, Hardy & Bacon, LLP
600 14th Street, NW
Suite 800
Washington, DC 20005
*Counsel for Gemstar-TV Guide
International, Inc*

Howard J. Symons
Miiitz, Levin, Cohn, Ferris, Glovsky &
Popeo, P.C.
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004
*Counsel for Cublevision Systems
Corporation*

Stephen Pastorkovich
Organization for the Promotion and
Advancement of Small Telecommunications
Companies
21 Dupont Circle, NW
Suite 700
Washington, DC 20036

Antoinette C. Bush
Northpoint Technology
444 North Capitol Street, NW
Washington, DC 20001



Gregory Noll